

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3246 of 1999
with

SPECIAL CIVIL APPLICATION No 9364 of 1999
with

SPECIAL CIVIL APPLICATION No 10457 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAIDHANPUR SEWA SAHKARI MANDLI LTD

Versus

ELECTION OFFICER

Appearance:

SPECIAL CIVIL APPLICATION NO 3246 of 1999

MR HD VASAVADA for Petitioners

MR MA PATEL, AGP for Respondent No. 1, 2

SPECIAL CIVIL APPLICATION NO 9364 of 1999

MR JAYANT PATEL for Petitioners

MR MA PATEL, AGP for Respondent No. 1 and 2

MR HD VASAVADA for Respondent No. 3

SPECIAL CIVIL APPLICATION NO 10457 of 1999

MR JAYANT PATEL for Petitioners

MR MA PATEL, AGP for Respondent No. 1

Date of decision: 08/08/2000

ORAL JUDGEMENT

These three petitions under Article 226 of the Constitution arise out of elections to the Agricultural Produce Market Committee, Bhuj.

2. The election programme was published by the Director of Agricultural Market and Rural Finance, Gujarat on 23.02.1999 under Rule 10(2) of the Agricultural Produce Market Rules, 1965. The date of receiving nomination papers was 17.05.1999, the date of scrutiny was 18.05.1999 and the last date of withdrawal was 21.05.1999. The election was to be held on 29.05.1999 and the counting was to be held on 30.05.1999.

3. On 30.04.1999, four societies filed Special Civil Application No.3246 of 1999 challenging the order dated 14.04.1999 passed by the Election Officer cancelling the names of the petitioners from the voters' list and rejecting their application for inclusion of the same in the voters' list. Notice was issued returnable on 13.05.1999 and ultimately on 14.05.1999, rule was issued and the election which was scheduled to be held as per programme was ordered to be stayed so far as agriculturists' constituency of the Market Committee was concerned.

4. On 30.06.1999, one Lakhod Seva Sahakari Mandali Ltd. filed a Civil Application praying that the Society may be permitted to be impleaded as party respondent in the said Special Civil Application and the interim order may be vacated.

5. The said Civil Application came up for hearing before M.R. Calla, J. who, by his order dated 03.08.1999, allowed the said Civil Application and vacated the stay of the election. It is stated at the Bar that an LPA was filed against the said order but it was subsequently withdrawn. After the stay was vacated, the elections were held on 24.09.1999 and the result was also declared on the same date. 8 persons were declared successful from the agriculturists' constituency including the petitioners in Special Civil Application No.10457 of 1999. The election of the said 8 persons was challenged by two of the petitioners in Special Civil Application No.3246 of 1999 by filing an appeal under

Rule 28 of the Gujarat Agricultural Produce Market Rules, 1965. The Director of Agriculture by his order dated 20.12.1999 allowed the appeal challenging the election and set aside the election of members from the agriculturists' constituency. It is the said order of the Director which is under challenge in Special Civil Application No.10457 of 1999.

6. Special Civil Application No. 9364 of 1999 is filed since, according to the petitioners, the Director did not publish the Notification for constituting Agricultural Produce Market Committee even though the result of the election had been declared.

7. The petitioners in Special Civil Application No.9364 of 1999 and Special Civil Application No.10457 of 1999 have impleaded one Shri Pushpadan Gadhavi, Member of Parliament as party respondent making certain allegations of malafides against him. The said allegations have been denied in the affidavit filed on behalf of the other respondents. However, in the facts and circumstances of the case, it is not necessary to go into the said allegations.

8. In Special Civil Application No.10457 of 1999, according to the petitioners, initially the elected persons whose election was challenged were not made parties to the appeal filed before the Director but they were impleaded subsequently on 11.11.1999. It is also contended on behalf of the petitioners that the hearing was fixed on 24.11.1999 but, on that date the Director was not available in the office and the petitioners were told that the date of hearing will be intimated to them. It is averred in para 3.1 of the petition that the next dates of hearing i.e. 13th December, 1999 and 16th December, 1999 were not communicated to the petitioners. The Director in his affidavit has stated that the concerned parties were invited to appear before the Director on 07.12.1999 and 13.12.1999 but it is not clear whether the dates were communicated orally or in writing. However, the fact remains that the hearing was held in the absence of the elected persons and ordinarily there would be no reason for them to remain absent if the dates had been communicated to them. In the circumstances, I am satisfied that the elected persons did not have the opportunity of presenting their case before the Director. The impugned order dated 20.12.1999 passed by the Director setting aside the election deserves to be set aside on that ground only without expressing any opinion on any other contentions raised on behalf of either party. The Director shall hear the appeal after giving

an opportunity of hearing to the parties concerned and the parties will be at liberty to raise all the contentions before the Director available to them under the law. Rule is made absolute accordingly.

9. In Special Civil Application No.9364 of 1999, the grievance of the petitioner is that the Director has not published the names of the elected persons of the Market Committee in the Official Gazette as required by Rule 27. Rule 27 reads as follows:

"Publication of the names of elected and nominated members of the Market Committee. The names of the elected and nominated members of the market committee shall be published in the Official Gazette by the Director as soon as conveniently may be after their election and nomination."

No specific reason has been given by the Director for not publishing the names in the Official Gazette. The probable reason could be that out of 14 members of the Committee, the election of as many as 8 members was challenged. However, Shri Jayant Patel, the learned counsel for the petitioners, cited the decision of this court in Thakore Sitaji Mohanji and Another vs. The District Registrar, Co.op. Societies & Deputy Director, Agricultural Marketing & Rural Finance, Mehsana and Others [1996 (2) GLH Page 416]. It was contended in that case that since the election of all the members representing agriculturists who formed majority members was set aside, the Market Committee consisting of remaining members could not be said to be validly constituted and was not competent to elect new Chairman and Vice-Chairman. The said contention was negatived and it was held that once properly constituted Market committee comes into existence as a result of elections subsequent vacancies arising for whatever reasons does not affect validity of Market Committee. The ratio of the said decision is squarely applicable to the facts of the present case and the mere fact that election petition has been filed challenging the election of 8 members of the agriculturists' constituency is no ground for not publishing the names of the remaining members in the Official Gazette as required by Rule 27. In the circumstances, Director (Agriculture) is directed to issue the necessary Notification within three weeks from the date of receipt of this order. Rule made absolute accordingly.

10. Special Civil Application No.3246 of 1999 does

not survive in view of the subsequent events. Rule is discharged.

11. The result is that Special Civil Applications No.9364 of 1999 and 10457 of 1999 are allowed and Rule is made absolute as stated above. Rule is discharged in Special Civil Application No.3246 of 1999. No order as to costs. Direct Service permitted.

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